IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 17153 of 2003

Between:

Vanam Hariprasad Rao S/o. Jagannadha Rao
Sri Amba Satram, A.P.Endowments Department
Bhadrachalam Khammam District

..... PETITIONER

AND

1 The Government of Andhra Pradesh by its Principal Secretary,
Endowments-II Department, Secretariat,
Hyderabad
2 The Commissioner, Endowments Department
Government of Andhra Pradesh, Tilak Road,
Abids, Hyderabad
3 The Deputy Commissioner, Endowments Department,
4 The Assistant Commissioner, Endowments Department
Government of Andhra Pradesh, Khammam
5 Sri Srungeri Muth Sringeri, Karnataka State
rep. by its Administrator
6 Amba Satram, Bhadrachalam Khammam District,

rep. by itsDharmadhikar

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring that the action of the 1st respondent in issuing the G.O.Ms.No.1062, dated 18.12.97, and consequent handing over possession of the

Amba Satram permanently to the 5th respondent, is illegal, urbitrary, without jurisdiction, and, ultravires the powers under Sec. 154 of the Act 30/1987, and the same is against the public interest, state ex-chequer, and the provisions of A.P.Charitable, Hindu Religious Institutions and Endowments Act 30/1987, and that the said G.O. is in violation of the provisions of A.P.Scheduled Areas Land Transfer Regulation 1/1959, as amended by Regulation 1/1970, and against the law laid down by the Hon'ble Supreme Court of India, dated 11.7.1997 in Samatha Vs. State of A.P. & others, reported in 1997 (8) S.C.C. 191 and consequently to declare that the 6th respondent has no jurisdiction or authority to initiate any disciplinary action against the petitioner, who is governed by the provisions of Act 30/1987, and that Amba Satram should be administered and managed by the Respondents 1 to 4 in accordance with the provisions of Act 30/1987.

Counsel for the Petitioner: MR.P.V.RAMANA

Counsel for the Respondent Nos.1 to 4: GP FOR ENDOWMENTS

Counsel for the Respondent Nos.5 and 6: Mr.B.V.SITHARAMA MURTHY

ADVOCATE

The Court made the following:

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ORDER

This writ petition is filed seeking direction to declare the action of the first respondent in issuing G.O.Ms.No.1062, dated 18-12-1997, and consequent handing over possession of the Amba Satram permanently to the fifth respondent as illegal, arbitrary, and consequently to declare that the 6th respondent has no jurisdiction or authority to initiate any disciplinary action against the petitioner and also that the Amba Satram should be administered and managed by respondents 1 to 4.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The petitioner was originally appointed as Temple Clerk in the Endowments Department in the Sammakka Saralamma Jatra, Mulkanur Village, Bheemadevarapalli Mandal of Karimnagar District. Subsequently, he was transferred to Sri Adimala Lakshma Reddy Charitable Trust, Metpalli village of Karimnagar District. Later, he was transferred to Sri Gunti Mallanna Choultry at

Khammam. Thereafter, he was transferred to Lakshminarasimha Swamp Temple, Gollpudi village. But, on the representation of the petitioner, the third respondent transferred the petitioner to Amba Satram Bhadrachalam, vide proceedings dated 09-03-1993. Ever since, till date, he is working as Temple Clerk in Amba Satram.

He further submits that Amba Satram Bhadrachalam is a Charitable Endowments Institution established for the purpose of providing continuous Anna Dana. For the said purpose, a huge extent of land admeasuring Ac.4000-00 was donated to the institution by the donors and the said properties are situated at Tekulapalli and Annisettipalli villages, which are situated within the Scheduled Areas of Khammam District. The institution is being governed under A.P. Charitable and Hindu Religious Institution and Endowments Act, 1987, and as such, his appointment is being governed under the provisions of Section 35 of the Act 1987.

He further submits that the first respondent, without any reasons whatsoever, basing on the letter dated 13-12-1993 of the second respondent, issued G.O.Ms.No.25, Revenue (Endowments-II) Department, dated 10-01-1994, exempting Amba Satram, Bhadrachalam, from the provisions of the Endowments Act 30/87 and handed over to Sri Srungeri Muth. Accordingly, Amba Satram was taken over by the fifth respondent, which is a Religious Institution situated at Karnataka State. After handing over the said Satram to the 5th respondent, the 5th and 6th respondents are not paying the increments, D.A., H.R.A., etc., to the employees working in the said Satram and that the petitioner is entitled for the said emoluments. Aggrieved by the inaction of the 5th and 6th respondents, he filed a representation, dated 16-08-1995 to respondents 3 and 4 requesting them to transfer him from Amba Satram to Vijaya Vigneswara Temple at Kothagudem, but there was no response from them. Therefore, he submitted another representation, dated 24-

08-1995, to the 3rd respondent and as there was no response, he filed another representation, dated 16-08-1996 to the 5th respondent. While the matter stood thus, the 1st respondent issued G.O.Ms.No.916, Revenue (Endts.II) Department, dated 06.11.1996, upon proposal of the 2nd respondent herein, extending the exemption for a further period of three years w.e.f., 09-01-1997. Before the expiry of the said extended period, upon the representation made by the 5th respondent, the 1st respondent issued G.O.Ms.No.1062, dated 18.12.1997, permanently exempting the Amba Satram, Bhadrachalam, as a special case from the operation of the provisions laid down under the Act 30/87. While the matter stood thus, the 6th respondent suspended the petitioner vide orders dated 26.05.2003. Aggrieved by the said suspension order, the petitioner made a representation to the 2nd respondent for his absorption into Endowments Department, but the same was not considered. Hence, this writ petition.

A detailed counter affidavit has been filed by the respondents denying the averments made in the writ petition and submitted that the Andhra Pradesh Scheduled Areas and Land Transfer Regulation prohibits only transfer of land in a scheduled area to a non-tribal by any person including the Government. But, under the impugned G.O. the administration was only transferred. Since the property in the scheduled area belongs to the choultry, it is the owner of the property. As the power to transfer the administration of Charitable and Hindu Religious Institutions vested with the Government, the Government transferred the administration of Amba Satram to Sri Srungeri Mutt permanently. Since, as per the impugned G.O., the petitioner was transferred to the administrative authorities of Sri Srungeri Muth along with the properties of Sri Amba Satram, the question of considering his promotion as person-in-management does not arise. The representation of the petitioner was rejected vide office order dated 09-11-2002 basing on the report of the Assistant

Commissioner-fourth respondent dated 02-08-2002, wherein it was reported that the Amba Satram was under the control of Sri Srungeri Muth by the orders of the Government and the staff working in the institution are working under the control of Dharmadikari. Since the staff working in the Amba Satram are under the control of Dharmadikari, he has suspended the petitioner from service. Therefore, the petitioner has no right to challenge the impugned G.O., in view of the fact that the same was issued in the interest of the institution. Hence, they pray to dismiss the writ petition.

Learned counsel appearing for the petitioner contended that Amba Satram, Bhadrachalam, situated in a Tribal area, is a Charitable Institution and is having Ac.4000-00 of land which
was donated by donors. By virtue of the proceedings, dated 18-12-1997, the entire properties have been transferred to a non-tribal area and consequently, the suspension order passed by the Darmadikhari suspending the petitioner from service is contrary to law. Since the writ petitioner is a regular employee of Endowments Department, Darmadikhari has no power to keep the writ petitioner under suspension and the Government did not file counter justifying the action.

On the other hand, the learned Government Pleader appearing for respondents 1 to 4 contended that it is not a case of transfer of the properties to a non-tribal area, but transfer of power to administer, or to look after the management of the Amba Satram. Hence, there are no grounds to interfere with the impugned proceedings.

The learned counsel appearing for respondents 5 and 6 contended that the petitioner has no *locus standi* to challenge the Government Order by the principles of estoppel; that the administration of the management of Amba Satram was effected in the year 1997 and, therefore, on the ground of delay and latches, the writ petition

is devoid of merits; that the Land Transfer Regulation has no application and that the writ petitioner is not a Government servant and that in the notification there was no mention of transfer of lands to the non-tribals; that the suspension is only pending enquiry and therefore, there are no grounds to interfere with the impugned proceedings.

The writ petitioner is working as Temple Clerk in Amba Satram since 1993. By virtue of the transfer orders passed by the third respondent, he was transferred and posted at Amba Satram, Bhadrachalam. It is the further case of the petitioner that as per the Government Order, the Amba Satram was handed over to the 5th respondent along with Endowments staff working in the Institution for administration, and requested the Endowments Department for his absorption into the Endowments Department. The representation of the petitioner dated 05-01-2002 was rejected as no feasible in view of the fact that as per G.O.Ms.No.1062, Revenue (ENDTS.II) Department, dated 18-12-1997, the Amba Satram was handed over to the fifth respondent along with staff and all the assets, but that order has not been challenged by the writ petitioner. The Darmadhikhari placed the petitioner under suspension by virtue of his order dated 26-05-2003 for having abstaining from duty without applying leave and absconding from duty without prior permission from the Manager or the Dharmadikari, failed to obtain the land revenue receipts from the Revenue Department even after payment made by Satram resulting in delay for audit of accounts and failed to implement the instructions of Dharmadhikari and Manager.

The main contention of the learned counsel for the petitioner is that under Section 3 of the A.P. Scheduled Areas and Land Transfer Regulation, 1959 as amended by Regulation 1 of 1970 (for short ‘Regulation 70’), any transfer of

immovable property situated in the agency area to a member of non-scheduled tribe shall be absolutely null and void, and therefore, the petitioner challenged the notification issued in the A.P. Gazette as per G.O.Ms.No.1062, dated 18-12-1997.

Originally, by virtue of G.O.Ms.No.916, Revenue (Endts.II) Department, dated 06-11-1996, the Gazette Notification was issued, which reads as follows:

> "In exercise of the powers conferred by Section 154 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987), the Governor of Andhra Pradesh hereby exempts Sri Amba Sathram, Bhadrachalam, Khammam District, from the operation of the provisions of sections 15, 29, 57, 58, 65 and 145 of the said Act for a further period of 3 (three) years with effect from 09-01-1997, subject to allowing Sri Sringeri Mutt authorities to administer the said Institution during the above period in accordance with the provisions of the Act 30/87."

A perusal of the above notification shows that initially for a period of three years, the 5th respondent was given authorization to administer the Amba Satram and no challenge was made when it was issued. But, again the Government by G.O.Ms.No.1062, dated 18-12-1997 issued the following notification:

> "In exercise of the powers conferred by section 154 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments hereby exempts Sri Amba Sathram, Bhadrachalam, Khammam District, from the operation of the provisions of Sections 15, 28, 57, 58, 65 and 145 of the Endowments Act permanently, subject to allowing Sri Sringeri Math authorities to administer the said institution permanently in accordance with the provisions of the Act 30/87."

A perusal of the above notification shows that the Amba Satram was handed over to the fifth respondent to administer the institution permanently. There is no dispute that the fifth respondent is a non-tribal religious institution. Even when this notification was issued in the year 1997, the petitioner has not raised his little finger till his suspension was ordered by the Dharmadhikari. After a lapse of six years and that too after passing the suspension order by the Dharmadhikari, the issue has been raised.

Section 3(1)(a) of the Regulation 70 reads as follows:

> "Notwithstanding anything in any enactment, rule or law in force in the Agency tracts any transfer of immovable property situated in the Agency tracts by a person. Whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes."

The word "person" used in Section 3(1) (a) of Regulation 70 is interpreted by the Supreme Court in the decision, relied on by the learned counsel for the petitioner, reported in ***SAMATHA v STATE OF A.P.*** , would also include the State Government.

The transfer is defined under Section 2(g) of the Regulation 70, which reads as follows:

> " 'Transfer' means mortgage with or without possession lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of such mortgage, lease, sale, gift, exchange or other dealing."

The learned counsel for the petitioner relied upon the word "other dealing". So, the administration of the fifth respondent-institution comes within the meaning of 'other dealing', and if the Management is taken over by the fifth respondent-institution, all the lands would come under the purview of the Management which is a non-tribal Religious Institution and therefore, such transfer is totally in violation of Section 3 of the Regulation 70.

There cannot be any dispute that object of the Regulation is to preserve tribal autonomy, their culture and economic empowerment to ensure social, economic and

political justice for preservation of peace and good government in the Scheduled Area.

In the above referred decision (1 supra), the Apex Court held that:

> "We are therefore inclined to take the view that the word "person" includes the State Government. The State Government also stands prohibited to transfer by way of lease or any other form known to law, the government land in Scheduled Area to non-tribal person, be it natural or juristic person except to its instrumentality or a co-operative society composed solely of tribes as is specified in the second part of Section 3(1)(a). Any other interpretation would easily defeat the purpose (sic) exclusive power entrusted by the Fifth Scheduled to the Governor"

In view of the pronouncement of the Apex Court, there is no dispute that the word 'person' used in Section 3(1)(a) includes the State Government and even the State Government also stands prohibited to transfer by way of lease or any other form known to law, the government land in Scheduled Area to non-tribal person.

Now the question is as to whether the impugned proceedings can be termed as a transfer of property within the meaning of Section 3 of the Regulation 70?

The "Transfer of Property" is defined under Section 5 of the Transfer of Property Act which means an act by which a living person conveys property in present or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act. The word 'conveys' is used in a wide sense so as to include sale, mortgage, charge, lease etc.

In the impugned proceedings, nowhere it is stated that the transfer of lands situated in the agency area have been transferred to the fifth respondent-institution

either by way of mortgage, lease, sale, gift, exchange or other dealing. But, the Notification only gives permission to the fifth respondent to administer the Amba Satram permanently. The administration is entirely different from transfer.

In my considered opinion, the word “Administration” does not come within the meaning of the word “other dealing” as expressed in Section 2(g) of the Regulation 70. Though the Amba Satram may be having immovable properties in the tribal area, they are being looked after by the management of the Amba Satram, which is a non-tribal institution. Though the impugned order does not directly indicate about the transfer of immovable property, but it only authorizes the fifth respondent to manage the affairs of Amba Satram.

The object of the Regulation is to prevent exploitation of the tribals and it does not allow parting with of their land and prevents induction of non-tribals in the Scheduled Area by allotment of the land or transfer of land. Since the choultry is unable to look after the administration of Amba Satram, the persons, who are interested in the choultry, addressed a letter to the Government to entrust the property to the fifth respondent to administer the Amba Satram. Since the administration of the choultry is admittedly vested with the Government, the Government is entitled to transfer the administration under the executive power. Since the land in the scheduled area belongs to the choultry, the immovable properties of the Amba Satram, if any, are continued to be under the ownership of choultry. In the impugned Government Order, only the administration was transferred. Therefore, in my considered opinion, the administration of the Sri Srungeri Muth has only been transferred to the fifth respondent. Hence, it is not a transfer, as such, transferring the immovable properties from a scheduled area to a non-tribal. The regulation only prohibits the transfer of immovable property in favour

of non-tribal in any other form. Therefore, the impugned proceedings does not come within the purview of Section 3 of the Regulation 70 and it is completely in accordance with law and therefore the same cannot be quashed as illegal and arbitrary and without jurisdiction.

The next contention of the writ petitioner is that the Dharmadhikari has no jurisdiction to place him under suspension.

As per G.O.Ms.No.1062, 18-12-1997, the petitioner was transferred to the administrative authorities of the fifth respondent. The petitioner's representation to take him into the service of Endowments Department was rejected by proceedings dated 09-11-2002, basing on the report of the Assistant Commissioner, who has reported that Amba Satram was under the control of the fifth respondent herein by the orders of the government, and the staff of the institution are working under the control of Darmadhikari. Since the staff along with the Amba Satram were transferred to the fifth respondent-institute, the fifth respondent, who is managing the Amba Satram, has administrative control over the employees. The representation of the petitioner for transfer to the Endowments Department was rejected and the same has become final, but that proceedings have not been challenged so far. Therefore, the petitioner continued to be under the control of Dharmadhikari, who is looking after the administration of Amba Satram, and therefore, he is competent to place the petitioner under suspension, because he has administrative control over the Amba Satram.

The writ petition is liable to be dismissed on the ground of latches and delay. When the impugned notification was issued in the year 1997, the petitioner has not challenged the same, but when he was suspended from service, now the challenge has been made i.e., after a lapse of six years and therefore, as rightly contended by the learned counsel for the respondents 5 and 6, the petitioner was estopped from

raising such a plea at this belated stage. No doubt, there cannot be any estoppel against statute but in view of the fact that the notification does not offend Section 3(1) of the Regulation 70 in any manner and therefore the petitioner is estopped from raising such a plea. Though several contentions were raised in the grounds that the G.O., issued by the first respondent is without jurisdiction and in violation of Section 154 of the Endowments Act, but no arguments were advanced on those aspects.

For the aforesaid reasons, the writ petition is devoid of merit and accordingly the same is dismissed.

The interim order dated 28-12-2004 passed by this Court in W.P.M.P.No.21303 of 2003 is vacated.

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19-07-2005

Prv

To

1 The Principal Secretary,

Government of Andhra Pradesh,
Endowments-II Department, Secretariat,
Hyderabad

2 The Commissioner, Endowments Department
Government of Andhra Pradesh, Tilak Road,
Abids, Hyderabad

3 The Deputy Commissioner, Endowments Department,

4 The Assistant Commissioner, Endowments Department
Government of Andhra Pradesh, Khammam

5 Two CCs to G.P. for Endowments, High Court of A.P.,Hyderabad

6 Two CD copies.